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McKnight v. *United States*, 115 Fed. 972 5

Statute involved:

White Slave Traffic Act of June 25, 1910, c. 394, sec. 4, 36 Stat. 826; 18 U. S. C. sec. 400 2

413564—41

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 526

HUGHES ROBERT HILLIARD, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 65–77) has not yet been reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered July 21, 1941 (R. 78). The petition for writ of certiorari was filed August 19, 1941. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925. See also Rule XI of the Rules of Practice and Procedure in

Criminal Cases promulgated by the Court May 7, 1934.

QUESTIONS PRESENTED

1. Whether reversible error resulted because the Government asked the defense for the production of certain letters.

2. Whether Government counsel, in replying to the closing argument of defense counsel, was guilty of prejudicial misconduct.

3. Whether the admission of testimony that certain prostitutes stated they were in petitioner's employ was prejudicial error.

4. Whether it was proper to reject certain of petitioner's proffered instructions.

STATUTE INVOLVED

Section 4 of the White Slave Traffic Act of June 25, 1910, 36 Stat. 825, 826 (18 U. S. C., sec. 400), provides:

> any person who shall knowingly persuade, induce, entice, or coerce any woman or girl under the age of eighteen years from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, with the purpose and intent to induce or coerce her, or that she shall be induced or coerced to engage in prostitution or debauchery, or any other immoral practice, and shall in furtherance of such purpose knowingly induce or cause her to go and to be carried or transported as a passenger in interstate

commerce upon the line or route of any common carrier or carriers, shall be deemed guilty of a felony, and on conviction thereof shall be punished by a fine of not more than ten thousand dollars, or by imprisonment for a term not exceeding ten years, or by both such fine and imprisonment, in the discretion of the court.

STATEMENT

Petitioner was convicted (R. 5) in the United States District Court for the Western District of Virginia, and sentenced (R. 6) to 10 years' imprisonment and to pay a fine of $10,000, on an indictment (R. 2–4) charging a violation of Section 4 of the White Slave Traffic Act in connection with the transportation of one Stella May Vaughn, a girl under the age of eighteen, from the State of Virginia to the State of New York.

Since the petitioner did not move in the trial court for a directed verdict and here admits that "if what she [Stella May Vaughn, the prosecuting witness] says be true, it must be conceded that this petitioner was guilty of a flagrant and outrageous violation of the statute in question" (Pet. 6), the sufficiency of the evidence to warrant the submission of the case to the jury is not here in question.[1] Consequently it is unnecessary

[1] While the testimony, we believe, indicated that there was a complex of coercion and influence in connection with the transportation of the prosecuting witness, the Circuit Court of Appeals in its opinion, after reciting the evidence, stated

to recite the evidence, which, however, is set forth at some length in the opinion of the Circuit Court of Appeals (R. 65–67).

ARGUMENT

1. Petitioner contends (Pet. 14–21) that prejudicial error occurred when the prosecuting attorney, during the cross-examination of Stella May Vaughn by the defense, called upon the defense to produce certain letters which, on cross-examination, she said she had written her mother and sister telling them that she wanted to come home and which apparently had never left the hotel where petitioner had lodged her (R. 31–32). Petitioner also asserts that the error was not cured by an instruction given by the trial judge in connection with the incident (R. 32).

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that "In summary, it may be said that while there was abundant evidence to support the charge that Hilliard induced the girl to go to New York for immoral purposes, there was little ground for believing that she was forced into a life of prostitution." (R. 66.) Asserting that the testimony of the prosecuting witness showed force and coercion alone, the petitioner seizes upon this statement in the opinion of the Circuit Court of Appeals as supporting the conclusion that the testimony of the prosecuting witness "should be discarded from the case" (Pet. 13–14). Aside from the fact that the credibility of a witness is a matter peculiarly within the province of the jury, there can be no doubt that, as the Circuit Court of Appeals said, there was abundant evidence to sustain the charge that petitioner induced the prosecuting witness to go to New York for an immoral purpose. See the court's summary of the evidence at R. 65–67.

It should be noted that defense counsel was solely responsible for developing the testimony that the letters had been written and apparently intercepted; that no objection was made until the end of a somewhat lengthy cross-examination,[2] and that the trial court promptly instructed the jury, in view of their respective denials, that it should draw no inference that either side ever had the letters in its possession (R. 32). This admonition, we submit, dispelled any prejudice which could have arisen from the request upon the defense to produce the letters, since the jury was unequivocally told that it should not infer that they were in the possession of the defense. In the case upon which petitioner principally relies (*McKnight* v. *United States,* 115 Fed. 972 (C. C. A. 6)), the incriminating document had been traced to the defendant and the defendant was called upon to produce it at the suggestion of the trial judge during direct examination of a Government witness. Clearly, under these circumstances, it was required that the jury be advised that the defendant was not compelled to produce the document and that the failure to do so afforded no ground for an inference of guilt.

2. Petitioner contends (Pet. 21–24), since that fact had not been established by proof, that the trial court committed prejudicial error when it

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[2] See p. 79 of the typewritten record on file with the Clerk of this Court.

permitted the prosecuting attorney, during the course of his closing argument, to read to the jury an investigator's report that telephone toll slips are destroyed after six months (R. 52–54).

Defense counsel in his closing argument had stated that it would have been a simple matter for the Government to have produced the records of the telephone company to substantiate the testimony of Stella May Vaughn that she had overheard a long-distance telephone call to New York City in which the petitioner had told two girls to meet her at the railroad station when she arrived there, and he "challenged" the prosecutor to "explain why such evidence was not produced" (R. 51–52). Since the "challenge" strongly intimated that the Government was improperly withholding evidence which would have tended to prove that the call had never been made, failure to censure the prosecutor's statement was not reversible error. In *Baker* v. *United States,* 115 F. (2d) 533, 544 (C. C. A. 8), it was said that "Counsel may * * * reply to argument of opposing counsel, and in doing so may make statements which might otherwise be improper." See also *United States* v. *Socony-Vacuum Oil Co.,* 310 U. S. 150, 239; *Comeriato* v. *United States,* 58 F. (2d) 557, 558 (C. C. A. 4); *Rice* v. *United States,* 35 F. (2d) 689 (C. C. A. 2).

3. It may be assumed, as petitioner contends (Pet. 24–25) and as the Circuit Court of Appeals

held (R. 74–75), that it was error for the trial judge to admit, over objection, the testimony of a maid at a New York hotel where the prosecuting witness and two other girls stayed, that these girls had told the maid that they were prostitutes employed by the petitioner (R. 41–43). But this testimony was merely corroborative of that which had already been given by the prosecuting witness.[3] Moreover, no real prejudice could have resulted to the petitioner from this testimony since it had only collateral bearing on the issue before the jury, which related to Stella May Vaughn alone. The Circuit Court of Appeals consequently was correct in deciding that reversible error did not result.

4. Finally, petitioner contends (Pet. 25–26) that the trial court improperly rejected his proferred instructions B, D, I, and J (R. 14–16; Pet. 25). A trial court is not required, of course, to give requested instructions in the precise language in which they are framed. Those sought by the petitioner were, we submit, given in substance by the court. The jury was fully instructed as to the essential elements of the offense charged (R. 19–20), proof of which was necessary for conviction (R. 18); that if they, the jurors, did not believe that all of those elements had been proved beyond a reasonable doubt they should find the defendant

[3] See pp. 43–45 of the typewritten transcript.

not guilty (R. 19–20); that Stella May Vaughn's previous character and conduct had a bearing on her credibility (R. 20–21); that if any witness had sworn falsely as to any material fact it should be considered in weighing the balance of that witness's testimony (R 18); that petitioner was under no obligation to testify; and that the jury should neither draw any inferences from, nor hold against him, his failure to take the stand (R. 21).[4]

CONCLUSION

The petition for writ of certiorari presents no question of importance and there is involved no conflict of decisions. We therefore respectfully submit that the petition should be denied.

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[4] The last two instructions clearly met the decision of this Court in *Bruno* v. *United States*, 308 U. S. 287.

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